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Attorneys for Plaintiff, JOHN PARZIALE and all others similarly situated

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN PARZIALE, individually, and
on behalf of all others similarly
situated,

Plaintiff,

vs.

HP, INC. and DOES 1-10,

Defendant(s).

Case No. 5:19-cv-05363-EJD

**SECOND AMENDED CLASS
ACTION COMPLAINT**

- (1) Violation of Florida Deceptive and Unfair Trade Practices Act (F.S.A. §§ 501.201 *et seq.*) and
- (2) Violation of Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.* (CFAA);
- (3) Trespass to Chattels

Jury Trial Demanded

1 Plaintiff JOHN PARZIALE (“Plaintiff”), individually and on behalf of all
2 other members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant HP,
5 INC. (hereinafter “Defendant”) to stop Defendant’s practice of modifying and
6 corrupting Purchasers’ printers by forcing unauthorized changes to their
7 firmware and to obtain redress for all Purchasers Nationwide (“Class Members”)
8 who, within the applicable statute of limitations period, had their HP Printers
9 modified to stop recognizing and accepting third party ink cartridges.

10 2. Defendant is a Delaware corporation with its principal place of
11 business and headquarters in California and is engaged in the design,
12 development, manufacture, sale, and distribution of printers and related
13 equipment and services throughout the world with a large share of its business
14 done in California.

15 3. On or around April 12, 2019, thousands of HP Printer owners in the
16 United States and other countries started experiencing problems and crashes with
17 their HP Printers, since said printers stopped recognizing and accepting third
18 party ink cartridges (i.e. ink cartridges which had not been manufactured by HP,
19 Inc. but were compatible with the HP Printers before April 12, 2019.

20 4. In an effort to dominate the ink cartridge marketplace, HP designed,
21 developed, wrote and distributed a firmware¹ update for HP Printers, including
22 HP Printers owned by Plaintiff and other members of the class.

23 5. HP forced firmware modifications to the HP Printers which were
24 specifically designed and programmed to reject, starting on April 12, 2019, all
25

26 ¹ “Firmware” is generally defined as a software program installed into a
27 hardware device. Firmware provides the necessary instructions for how the
28 device operates and communicates with other computer hardware.

1 third party ink cartridges, including any said third party ink cartridge which had
2 already been purchased and installed by Class Members and which were already
3 properly working in their HP Printers.

4 6. The Class Members were not informed by HP of this plan to
5 program a rejection of third party ink cartridges, either at the time they
6 purchased their printers from HP or at any time prior to HP's unannounced
7 updates to their firmware. HP's goal was to disable the HP Printers after their
8 sale to Class Members, unless and until only new HP brand ink cartridges were
9 installed, which cost approximately twice as much, in order for HP to greatly
10 increase its profits to the detriment of Class Members.

11 7. Plaintiff and similarly situated Purchasers purchased printers that
12 were represented as having certain features and capacities.

13 8. Plaintiff and similarly situated Purchasers relied on these
14 representations on the face of the packaging when purchasing their printers.

15 9. When purchasing these printers, Plaintiff and similarly situated
16 Purchasers desired and believed to have obtained printers with the capacity to
17 use third party ink cartridges.

18 10. Plaintiff and similarly situated purchasers were not told at the time
19 of purchase that their HP Printer would in the future reject the less expensive
20 third party ink cartridges.

21 11. Furthermore, Plaintiff and similarly situated Purchasers were not
22 informed by HP of the modifications in question and did not consent to HP
23 unilaterally pushing such modifications into their HP Printer, rendering the
24 printers unable to make, use, copy, scan, fax, or print documents, photographs, or
25 other printable items and making the printers no longer what Plaintiff and
26 similarly situated Purchasers had bargained for.

27 12. For these reasons and others, Plaintiff brings this class action
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1 complaint on behalf of himself and individuals similarly situated against
2 Defendant for its illegal, unfair, and unconscionable actions in violating the
3 privacy rights of hundreds of thousands of individuals nationwide in order to
4 obtain an unfair and illegal competitive advantage.

5 JURISDICTION AND VENUE

6 13. This class action is brought pursuant to Federal Rule of Civil
7 Procedure 23.

8 14. Venue is proper in the United States District Court for the Northern
9 District of California, in that Defendant's headquarters are located in Palo Alto
10 California in the Northern District of California.

11 15. There is original federal subject matter jurisdiction over this matter
12 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4
13 (Feb. 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides
14 for the original jurisdiction of federal courts in any class action in which at least
15 100 members are in the proposed plaintiff class, any member of the plaintiff
16 class is a citizen of a State different from the State of citizenship of any
17 defendant, and the matter in controversy exceeds the sum of \$5,000,000.00,
18 exclusive of interests and costs.

19 16. In the case at bar, there are at least 100 members in the proposed
20 Class, the total claims of the proposed Class members are in excess of
21 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff and
22 the class are citizens throughout various States across the United States.

23 17. Additionally, the Court has original federal subject matter
24 jurisdiction over this matter pursuant to 28 U.S.C. §1331 because it arises, at
25 least in part, out of a question of federal law, in particular the Computer Fraud
26 and Abuse Act, 18 U.S.C. § 1030, *et seq.*

THE PARTIES

18. Plaintiff is a citizen and resident of Jacksonville, Florida.

19. Defendant HP, INC. is a Delaware corporation with its principal place of business and state of incorporation in California. Defendant conducts a large share of its business within California and in this judicial district.

20. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or is attributable to, Defendant and/or its employees, agents, and/or third parties acting on its behalf, each acting as the agent for the other, with legal authority to act on the other's behalf. The acts of any and all of Defendant's employees, agents, and/or third parties acting on its behalf, were in accordance with, and represent, the official policy of Defendant.

21. Plaintiff is informed and believes, and thereon alleges, that Defendant is intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions of each and all its employees, agents, and/or third parties acting on its behalf, in proximately causing the damages herein alleged.

22. At all relevant times, Defendant ratified each and every act or omission complained of herein. At all relevant times, Defendant, aided and abetted the acts and omissions as alleged herein.

PLAINTIFF'S FACTS

23. On or about September 12, 2017, Plaintiff purchased an HP Officejet Pro 7740 printer from an Office Depot located at 5914 Ramona Blvd. Jacksonville, Florida.

24. On June 6, 2018, Plaintiff purchased another HP Officejet Pro 7740 printer online at Amazon.com.

25. In purchasing the printers, Plaintiff paid more than valuable

1 consideration. Including taxes and fees, Plaintiff paid \$213.99 for each printer.

2 26. When shopping for a printer, Plaintiff was looking for a printer that
3 had the most features including the ability to use 952-, 952XL-, 953-, and
4 953XL- series ink cartridges.

5 27. Nowhere at the time of purchase for either printer did Plaintiff see
6 any representations by Defendant that Plaintiff would only be able to use HP
7 brand ink-cartridges. The only statement on the packaging stated “Please use
8 genuine HP ink cartridges for best results.” This statement did not make
9 Plaintiff believe that he would be able only to use HP brand ink, and in fact gave
10 the opposite impression to reasonable consumers and to Plaintiff – that HP ink
11 would give the *best* results, but not the *exclusive* results

12 28. Plaintiff was aware that ink cartridges contributed to a significant
13 cost of the printer over its lifetime at the time of purchase. As a result, the ability
14 to use third party ink cartridges was one of the most significant features of the
15 printer that Plaintiff was seeking when examining the features of the printers and
16 determining which printer to purchase. In fact, Plaintiff did not purchase other
17 printers, such as a Lexmark brand printer, in favor of the HP Officejet Pro 7740
18 because of his belief that he could use third party ink cartridges. Had Plaintiff
19 known that he would be unable to use third party ink cartridges, Plaintiff would
20 have purchased a different printer.

21 29. Plaintiff began using the printer with the preinstalled HP ink
22 cartridge.

23 30. Over the life of the printer, Plaintiff used both HP ink cartridges and
24 third party ink cartridges.

25 31. On or about April 12, 2019, HP forced a firmware update onto
26 Plaintiff’s 7740 printers. From that day forward, Plaintiff could not get third
27 party ink cartridges or refilled HP ink cartridges to work and was instead greeted
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1 with an error message. When Plaintiff tried to use his HP Officejet Pro 7740 to
2 make black and white copies, the printer would not operate until Plaintiff
3 ensured that every color ink cartridge was a new HP brand ink cartridge.

4 32. In April 2019, HP implemented widespread firmware updates using
5 the Dynamic Security technology, to push firmware onto consumers' HP
6 printers, including Plaintiff's printers, without conspicuous advanced notice or
7 authorization in order to disable the ability of such users to utilize third party
8 and/or refilled ink cartridges.

9 33. The result of the firmware push was that HP caused expense to
10 Plaintiff and other similarly situated users through the following means: 1)
11 rendering existing pre-purchased third party ink cartridges and refill cartridges
12 useless and valueless; 2) forcing users to purchase significantly more expensive
13 ink cartridges of HP brand in order for the cartridges to function in their printers;
14 and 3) devaluing the HP printers of users, by invading and revising the internal
15 firmware and software of the product such that its functionality was more limited
16 and of less value to users and prospective users.

17 34. For instance, Plaintiff had purchased and was in possession of at
18 least nine refilled HP 952XL Black cartridges at the time that the firmware
19 update was implemented, which were rendered useless and valueless to Plaintiff
20 as a result of HP's unannounced firmware update. Had Plaintiff known that HP
21 could or would do this at its sole unannounced discretion at the time of purchase,
22 Plaintiff would have bought a different brand of product.

23 35. Plaintiff was given no disclosures on the box or sales page at the
24 time of purchase that HP would or could lock out customers from using refill or
25 replacement third party ink cartridges.

26 36. Unbeknownst to Plaintiff or other HP customers, since HP never
27 advises its customers of this feature, HP's wi-fi enabled printers come pre-
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1 configured to perform automatic firmware updates without user intervention,
2 meaning that by default, they are activated to install firmware updates from HP
3 without user intervention.²

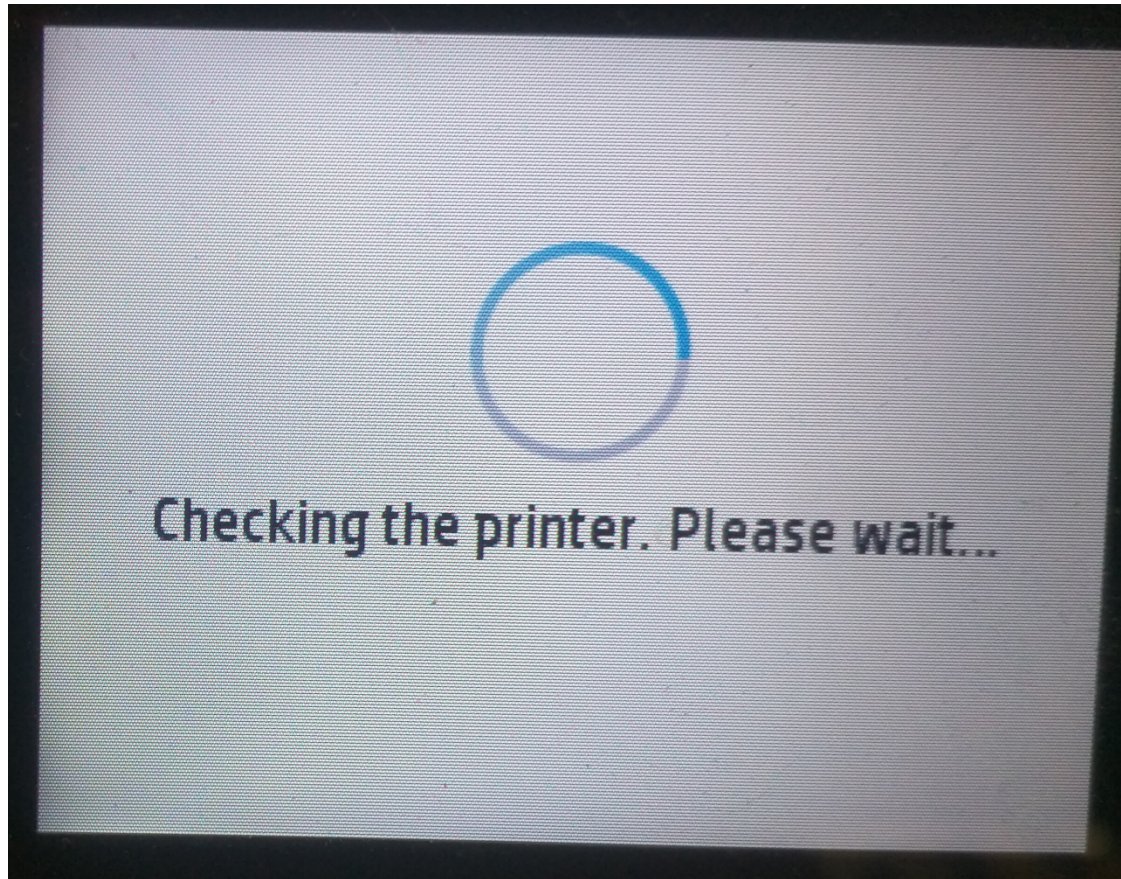
4 37. At the time of purchase for either of his printers, Plaintiff did not
5 visit or otherwise rely on any information contained within support.hp.com.

6 38. Instead, Plaintiff relied on the same information a reasonable
7 consumer would have used in deciding to make the purchase—the information
8 contained on the box and store page for the printers.

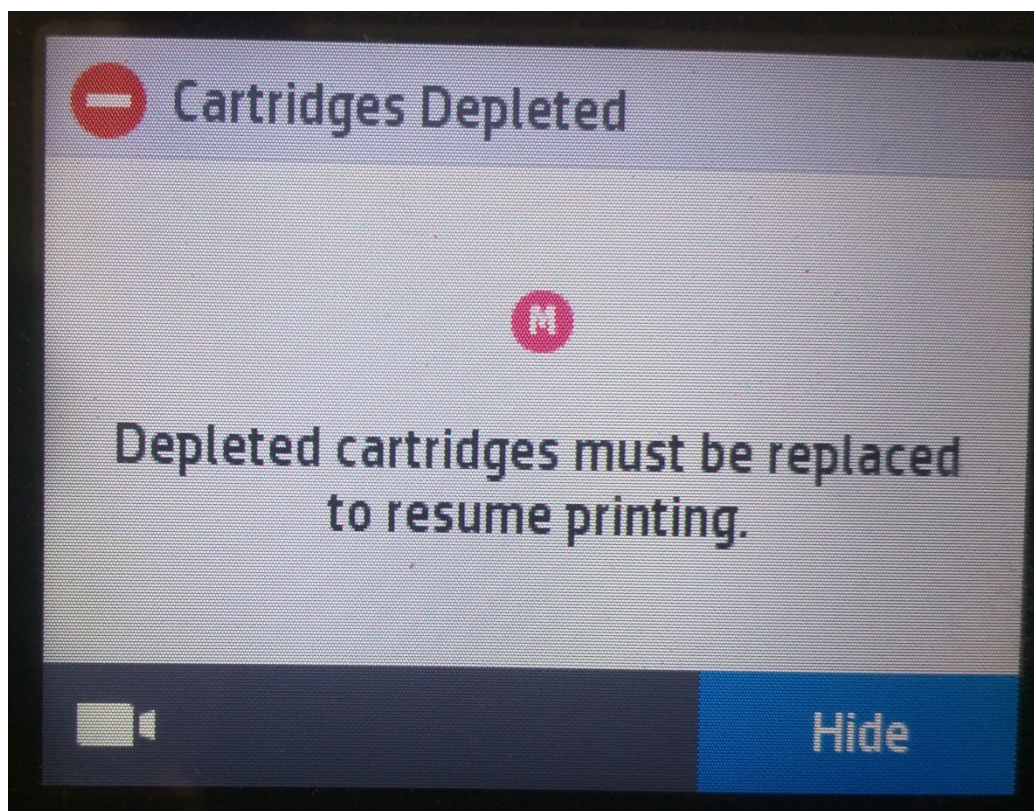
9 39. Regarding the error messages Plaintiff received, these too were
10 highly misleading to Plaintiff and to a reasonable consumer.

11 40. Upon installing a refilled ink cartridge, Plaintiff was given
12 notification of the following message on his computer:

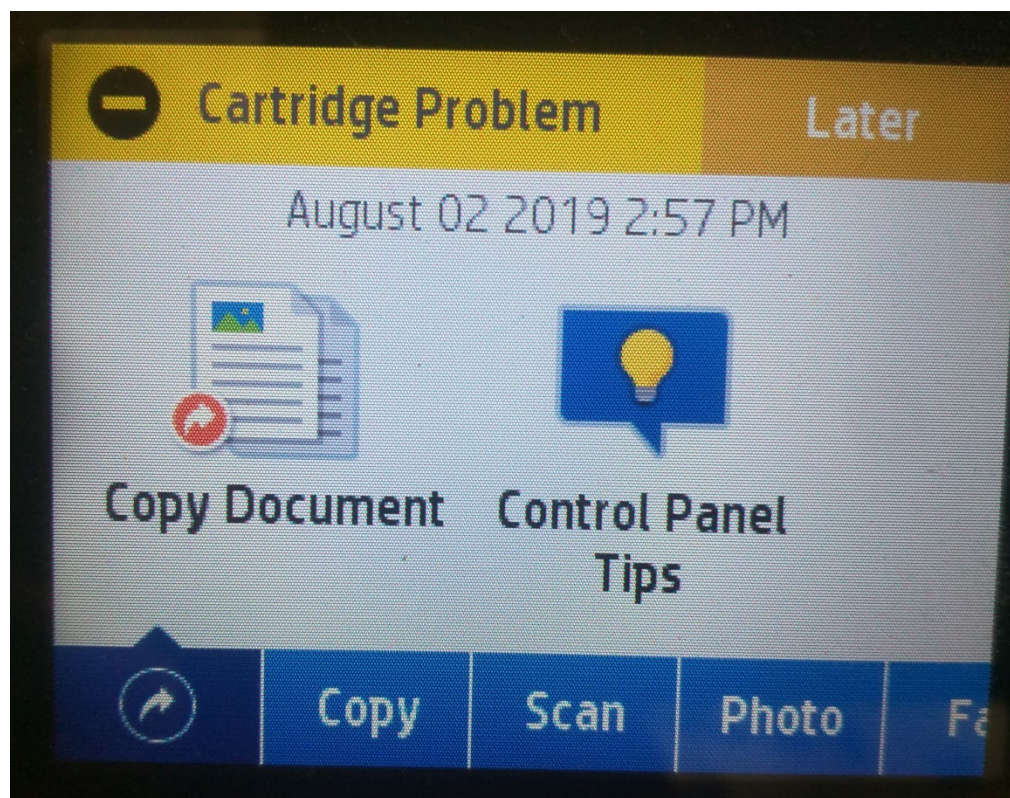
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24 ² In his First Amended Complaint, Plaintiff cited to HP's Support page for
25 Plaintiff's model of printer to explain how HP's dynamic security function works
26 to permit HP to unilaterally invade consumers' printers and force updates and
27 how the text for the specific update used demonstrated how HP's statements
28 regarding the dynamic security update and its effect on printers was itself
inaccurate. As stated in paragraph 37, Plaintiff did not view the support page
prior to purchasing either of his printers and did not rely on the statements
therein.



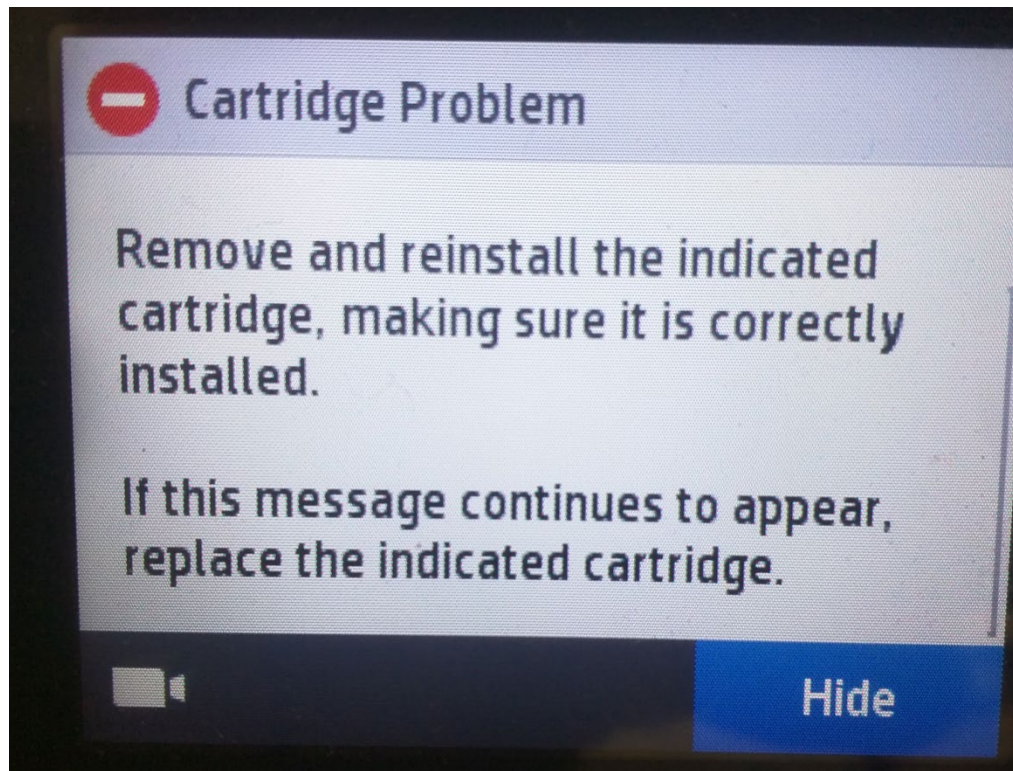
41. Plaintiff then received the following error message that was displayed, informing him that his printer cartridge could not print without replacing the empty cartridge, which suggested to Plaintiff that even though he had inserted a full refilled ink cartridge, that his printer believed that he had inserted an empty cartridge. The error message did not notify Plaintiff that his ink cartridge had been rendered incompatible with his printer due to HP's firmware update.



42. When Plaintiff attempted to bypass this error message by hiding the error message, he was given another misleading error message, an example of which is shown as follows:



43. Plaintiff attempted to get his printer to work with non-HP brand ink cartridges as well, in case the firmware update only affected refilled ink cartridges. When Plaintiff attempted to use third party ink cartridges with his printers he was shown the following error message:



44. Upon learning this, Plaintiff felt ripped off, cheated, and violated by Defendant.

45. Plaintiff never authorized Defendant to force this modification on him in any way nor at any time.

46. Defendant manufactured, sold, and modified Plaintiff's printer.

47. Such business tactics rely on falsities, deception and force against a reasonable Purchaser.

48. When purchasing the printer, Plaintiff anticipated using both Original HP-manufactured ink cartridges and third party ink cartridges based off the representations on the box which implied that third party cartridges would work with the printers, but soon discovered (a) Original HP-manufactured ink cartridges were considerably more expensive than third party cartridges; (b) third party ink cartridges produced printed matter as good as or better than Original HP-manufactured ink cartridges; and (c) third party ink cartridges appeared to

1 last longer and produce more pages per cartridge than Original HP-manufactured
2 ink cartridges.

3 49. Plaintiff was under the impression that when purchasing the printer,
4 Plaintiff would be able to use third party ink cartridges and refilled HP ink
5 cartridges. When Plaintiff purchased the printer, almost every printer allowed the
6 use of third party ink cartridges and refilled name brand cartridges and HP's box
7 use of the term "best results" instead of "only results" indicated that such
8 cartridges would be used, so Plaintiff reasonably believed that he would be able
9 to use Original HP-manufactured ink cartridges, third party remanufactured ink
10 cartridges compatible with his HP Officejet Pro 7740, and refilled HP ink
11 cartridges (whether refilled by the Plaintiff or by third parties). In fact, once the
12 HP Officejet Pro 7740 printers were installed, Plaintiff confirmed his pre-
13 purchase assumptions by successfully using a variety of compatible cartridge
14 offerings. Defendant had made a material representation to this effect by
15 omitting the crucial fact that Defendant had intended to prevent Plaintiff's use of
16 a third party ink cartridge or a refilled HP ink cartridge in order to obtain a
17 substantial profit from Plaintiff.

18 50. Plaintiff was harmed by this because if the firmware was present at
19 the time that he brought the printer home from the store, he would have been
20 able to immediately return the product to the store for a return. However, since
21 it was sprung on Plaintiff years later, Defendant had implemented a ticking time
22 bomb in its printers to be set off at a later date, at a time where Plaintiff and
23 other similarly situated consumers had no recourse but to either succumb to HP's
24 conduct and pay the inflated price of HP brand printer cartridges, or discard his
25 two printers and purchase printers of a different brand. The elements of
26 infiltration and surprise by HP were significantly harmful to Plaintiff and others.

27 51. It was Plaintiff's understanding at the time of purchasing the printer
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1 that ink cartridges represent a large amount of the cost associated with the
2 printers.

3 52. Plaintiff was also of the understanding that third party ink cartridges
4 and refilled brand name cartridges are often much cheaper than new HP brand
5 ink cartridges.

6 53. Plaintiff relied on Defendant's representations and omissions that
7 Plaintiff would be able to purchase and use third party ink cartridges or refilled
8 brand name cartridges with his printers.

9 54. Plaintiff alleges that such representations and forced modifications
10 were part of a common scheme to mislead Purchasers, invade their privacy rights
11 and obtain an unfair competitive advantage against its business rivals in the
12 current marketplace.

13 55. Not only were such representations clearly misleading because the
14 printer was infiltrated and altered through the course of his use, but the forced
15 modification completely robbed Plaintiff of any use of third party ink cartridges
16 or refilled HP ink cartridges that he had already purchased, rendering them of
17 zero value. In addition, the firmware update disabled all or most of Plaintiff's HP
18 printers' functionality, refusing to function until Plaintiff purchased and installed
19 Original HP-manufactured ink cartridges, which significantly devalued the
20 products, equivalent to HP having broken into Plaintiff's home in the dark of
21 night and taken a blunt instrument to his printers.

22 56. Plaintiff would not have purchased the printers if he knew that
23 Defendant would forcibly control and modify his printers to reject third party ink
24 cartridges, or if Defendant had not intentionally withheld this important and
25 relevant information from his purchasing decision.

26 57. Defendant benefited from falsely advertising the features and
27 functions of the printer and from forcing unwanted and destructive modifications
28

1 on Plaintiff's and similarly situated Purchasers' Printers. Defendant benefited
2 from the loss it caused to Plaintiff and provided nothing of benefit to Plaintiff in
3 exchange.

4 58. Defendant's unilateral and invasive decision to force the dynamic
5 security firmware update on Class Printers does nothing to improve consumers
6 experiences. Prior to the update, Plaintiff and Class Members' printers used and
7 worked successfully with and had quality printing from third party and refilled
8 ink cartridges for which Plaintiff and Class Members had a significant benefit
9 due to the lower cost of said ink cartridges.

10 59. Defendant's decision to force the dynamic security feature through a
11 firmware update on Class Printers specifically does not provide any
12 countervailing benefits to consumers. The dynamic security features only effect
13 is to restrict the ability for Plaintiff and Class Members to have choice in the ink
14 cartridges they use with their printers. Such restriction does not create any
15 benefit for consumers, because the consumers already had quality printing at a
16 lower price from the use of third party and refilled cartridges. The effect of this
17 dynamic security is to, at best, cause the consumers to experience the same
18 quality of printing as consumers had previously while removing the ability to use
19 third party and refilled ink cartridges and thus cost consumer significantly more
20 money.

21 60. Thus, there is no countervailing benefit for consumers from this
22 feature to offset the harm caused by forcing consumers to purchase more
23 expensive ink cartridges and for consumers to have sunk costs as a result of their
24 already purchased third party and refilled ink cartridges becoming worthless.

25 61. Further, there is no way that Plaintiff could have reasonably avoided
26 the alleged injury. As noted above, Plaintiff and the Class relied on the
27 statements contained on the box and store page to indicate that the printers could
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1 be used with third party and refilled ink cartridges. Because Defendant failed to
2 disclose information which would correct the omission that it would break the
3 ability for the printers to use third party or refilled ink cartridges and Plaintiff
4 and the Class reasonably relied on the statements Defendant did make, Plaintiff
5 could not have reasonably anticipated Defendant's decision to force the dynamic
6 security update on the printers and reduce their functionality and value. Such
7 inability is exemplified by the fact that Plaintiff had purchased and now holds
8 nine generic cartridges which are now worthless as a result of Defendant's
9 unilateral, invasive, and destruction dynamic security firmware update.

10 **COMMON FACTUAL ALLEGATIONS**

11 62. HP sells computers, printers and printer services. Printers and
12 printer ink account for nearly half of HP's business.

13 63. HP obtains little or no profits from its printer sales.

14 64. HP obtains substantial profits from its sales of printer ink cartridges.

15 65. In HP's printer business, HP obtains most of its profits from selling
16 ink cartridges used in HP printers.

17 66. These ink cartridges are generally priced at \$20 to \$99 per ounce
18 (\$2,618 to \$12,608 per gallon). The cost of ink cartridges often amounts to a
19 substantial portion of the total cost of the printer housing the cartridges.

20 67. Competing manufacturers sell printer ink cartridges that are
21 compatible with HP printers and are priced well below the corresponding HP
22 cartridges. To save money, HP printer owners often buy non-HP cartridges.

23 68. Microchip technology allows HP to detect whether HP printers are
24 using HP or non-HP cartridges.

25 69. Because the Class Printers connect to the Internet, HP can
26 communicate with HP printers after it sells them. One way to communicate with
27 printers is by updating their software.

28

The Class Printers

70. Plaintiff is informed, believes, and based thereon alleges that Defendant engaged in the exact same practices with respect to all the HP Officejet Pro 7740 model printers like the one that Plaintiff purchased, as well as an extensive list of other similarly-effected printer models. Hereafter, the following model printers shall be collectively referred to as “Class Printers:”

- a. HP Officejet Pro 7720 All-in-One Printer;
- b. HP Officejet Pro 7730 All-in-One Printer;
- c. HP Officejet Pro 7740 All-in-One Printer;
- d. HP Officejet Pro 8210 All-in-One Printer;
- e. HP Officejet Pro 8216 All-in-One Printer;
- f. HP Officejet Pro 8218 All-in-One Printer;
- g. HP Officejet Pro 8700 All-in-One Printer;
- h. HP Officejet Pro 8710 All-in-One Printer;
- i. HP Officejet Pro 8714 All-in-One Printer;
- j. HP Officejet Pro 8715 All-in-One Printer;
- k. HP Officejet Pro 8716 All-in-One Printer;
- l. HP Officejet Pro 8717 All-in-One Printer;
- m. HP Officejet Pro 8718 All-in-One Printer;
- n. HP Officejet Pro 8719 All-in-One Printer;
- o. HP Officejet Pro 8720 All-in-One Printer;
- p. HP Officejet Pro 8724 All-in-One Printer;
- q. HP Officejet Pro 8725 All-in-One Printer;
- r. HP Officejet Pro 8726 All-in-One Printer;
- s. HP Officejet Pro 8727 All-in-One Printer;
- t. HP Officejet Pro 8728 All-in-One Printer;
- u. HP Officejet Pro 8730 All-in-One Printer;

1 v. HP Officejet Pro 8732M All-in-One Printer;
 2 w. HP Officejet Pro 8734 All-in-One Printer;
 3 x. HP Officejet Pro 8735 All-in-One Printer;
 4 y. HP Officejet Pro 8736 All-in-One Printer;
 5 z. HP Officejet Pro 8740 All-in-One Printer;
 6 aa. HP Officejet Pro 8743 All-in-One Printer;
 7 bb. HP Officejet Pro 8744 All-in-One Printer;
 8 cc. HP Officejet Pro 8745 All-in-One Printer;
 9 dd. HP Officejet Pro 8746 All-in-One Printer;
 10 ee. HP Officejet Pro 8747 All-in-One Printer;
 11 ff. HP Officejet 7740 All-in-One Printer;
 12 gg. HP Officejet 8702 All-in-One Printer;
 13 hh. HP Officejet 8715 All-in-One Printer.

14 71. With respect to all Class Printers, HP implemented and utilized the
 15 same Dynamic Security technology in the same or similar fashion as with respect
 16 to Plaintiff, in order to deactivate all Class Printers from having the ability to
 17 function with third party or refill ink cartridges. This is the core conduct that is
 18 at the heart of Plaintiff's case, and the conduct occurred with respect to all Class
 19 Printers in a nearly identical fashion.

20 72. People typically use Class Printers in homes or small offices.

21 73. The Class Printers rely on ink cartridges for the ink with which they
 22 print documents.

23 74. HP obtains a significant portion of its printer ink revenue from sales
 24 of replacement ink cartridges for the Class Printers.

25 75. When it sold the Class Printers, HP made the same or similar
 26 misrepresentations and omissions with respect to each Class Printer.

27 76. HP made the same or similar misrepresentations and omissions with

1 respect to each Class Printer, when it eliminated Class Printers' compatibility
2 with third-party ink cartridges.

3 77. In the same or similar manner, HP's firmware update disabled all
4 Class Printers' ability to function with third-party ink cartridges.

5 **HP's Motives for Carrying Out Its Injurious Firmware Update**

6 78. HP printers and compatible ink cartridges contain chips that allow
7 the printer and ink cartridge to communicate with each other. During these
8 communications, through the use of key codes, the printer authenticates that the
9 cartridge is compatible with it. The printer chip contains a master key code; the
10 cartridge chip contains a base key code that is derived from the master code.

11 79. HP has sought to enforce its alleged intellectual property rights
12 associated with ink cartridges against alleged infringers. Whether attempting its
13 enforcement under trade secret law or patent law, HP has generally been
14 unsuccessful.

15 80. In the Northern District of California, HP brought and voluntarily
16 dismissed a lawsuit against Datel for allegedly misappropriating trade secrets
17 concerning key codes. *Hewlett-Packard Co. v. Datel Holdings Ltd.*, No. 14-cv-
18 02891-EJD (N.D. Cal. filed June 23, 2014) (voluntarily dismissed on Feb. 6,
19 2015). HP also brought—and voluntarily dismissed—a suit against Ninestar and
20 Apex for making ink cartridge chips that allegedly infringed three HP patents.
21 *Hewlett-Packard Co. v. Ninestar*, No. 14-cv-04473-HSG (N.D. Cal. filed Oct. 6,
22 2014) (voluntarily dismissed on May 6, 2015).

23 81. HP's IP enforcement efforts in Europe have been similarly
24 unsuccessful. In late 2015, HP lost a patent suit in the Netherlands against
25 Digital Revolution, a Dutch maker of third-party ink cartridges that HP
26 unsuccessfully claimed infringed a European ink cartridge chip patent similar to
27 the patents at issue in the *Ninestar* case. *Hewlett-Packard Co. v. Digital*
28

1 *Revolution BV* [d.b.a. 123inkt], Case No. C/09/483615 / HA ZA 15-245, The
2 Hague (Netherlands) (decided Nov. 25, 2015).

3 82. According to its annual reports and other SEC statements, HP's
4 revenues from sales of printer ink have declined in each year since at least 2013.
5 In its 10-Q statement filed with the SEC for the third quarter of 2016, HP
6 reported an 18 percent decline in year-over-year revenue from sales of printer
7 ink.

8 83. HP was therefore motivated to boost its earnings from sales of ink
9 cartridges by directly disabling printers and ink cartridges and by conditioning
10 the continued use of HP printers on purchases of its own cartridges.

11 **HP's Injurious Firmware Update**

12 84. In April 2019, thousands of Class Printers throughout the United
13 States failed.

14 85. These failures did not result from any problem or error with the ink
15 cartridges in the Class Printers. Despite HP's error message, these ink cartridges
16 were neither incorrectly installed, depleted, nor damaged.

17 86. HP's firmware update changed the communication protocol between
18 HP printers and microchips located in both HP-branded ink cartridges and third-
19 party cartridges so that certain varieties of third-party inkjet cartridge
20 microchips, were no longer able to communicate with the HP printer firmware.
21 Because the firmware update blocked these remanufactured ink cartridge chips,
22 any cartridge with such a chip no longer functioned with an HP printer.

23 87. Failed Class Printers still don't work, except where they have been
24 loaded with original replacement ink cartridges manufactured by HP.

25 88. This is not the first time HP has engaged in this type of conduct. In
26 or around March 2016, HP implemented a firmware update that similarly altered
27 the communication protocol between HP printers and ink cartridges. That
28

1 firmware update targeted microchips manufactured by Static Control
 2 Components, and prevented remanufactured inkjet cartridges using such
 3 technology from working with HP printers. HP ran another campaign of
 4 firmware updates in September 2017, which were highly publicized and subject
 5 to a class action and eventual injunctive relief judgment.³

6 89. HP engaged in similar conduct with a separate firmware update in or
 7 around 2015, which targeted other technologies used in the inkjet marketplace by
 8 third-party remanufacturers of ink cartridges and ink refills.

9 90. HP's pattern of pushing firmware updates upon consumers has
 10 disrupted the marketplace in the inkjet cartridge and refill market, by
 11 systematically disabling technology lawfully reengineered by third-party ink
 12 cartridge makers who sell their products in the same market as HP. These
 13 firmware updates rendered third-party ink cartridges obsolete with the click of a
 14 button. These updates harmed competition and caused consumers to pay more
 15 for HP products.

16 91. HP purposely caused Class Printers with non-HP ink cartridges to
 17

18 ³ *E.g., HP Launched Delayed DRM Time Bomb to Disable Competing*
 19 *Printer Cartridges,*
 20 [https://www.techdirt.com/articles/20160920/07021035568/hp-launched-](https://www.techdirt.com/articles/20160920/07021035568/hp-launched-delayed-drm-time-bomb-to-disable-competing-printer-cartridges.shtml)
 21 [delayed-drm-time-bomb-to-disable-competing-printer-cartridges.shtml](https://www.techdirt.com/articles/20160920/07021035568/hp-launched-delayed-drm-time-bomb-to-disable-competing-printer-cartridges.shtml) (last
 22 visited Mar. 16, 2017); *EFF calls on HP to disable printer self-destruct*
 23 *sequence,* [http://arstechnica.com/information-technology/2016/09/hp-should-](http://arstechnica.com/information-technology/2016/09/hp-should-apologize-and-stop-sabotaging-non-hp-ink-cartridges-eff-says/)
 24 [apologize-and-stop-sabotaging-non-hp-ink-cartridges-eff-says/](http://arstechnica.com/information-technology/2016/09/hp-should-apologize-and-stop-sabotaging-non-hp-ink-cartridges-eff-says/) (last visited
 25 Mar. 16, 2017); *Dedicated to the best printing experience,*
 26 [http://www8.hp.com/us/en/hp-news/blog/Small-Business-Printing/best-](http://www8.hp.com/us/en/hp-news/blog/Small-Business-Printing/best-possible-printing-experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_1475273723_78f4d01e0844c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=291795&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2Ecom%2F)
 27 [possible-printing-](http://www8.hp.com/us/en/hp-news/blog/Small-Business-Printing/best-possible-printing-experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_1475273723_78f4d01e0844c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=291795&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2Ecom%2F)
 28 [experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_](http://www8.hp.com/us/en/hp-news/blog/Small-Business-Printing/best-possible-printing-experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_1475273723_78f4d01e0844c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=291795&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2Ecom%2F)
[1475273723_78f4d01e0844c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=29179](http://www8.hp.com/us/en/hp-news/blog/Small-Business-Printing/best-possible-printing-experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_1475273723_78f4d01e0844c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=291795&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2Ecom%2F)
[5&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2Ecom%2F](http://www8.hp.com/us/en/hp-news/blog/Small-Business-Printing/best-possible-printing-experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_1475273723_78f4d01e0844c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=291795&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2Ecom%2F) (last visited
 Mar. 16, 2017).

1 fail.

2 92. The failure of Class Printers on the same day resulted from
3 malicious code that HP wrote and installed.

4 93. Through its firmware update, HP sought to repel competition from
5 more affordable ink cartridges on the market. The purpose of HP's update was to
6 disable HP printers containing non-HP ink cartridges. By doing so, HP sought to
7 induce more consumers to buy HP's higher-priced cartridges and to reduce the
8 market share of its ink cartridge competitors.

9 94. HP carried out this scheme to restrict the choices available to its
10 customers, induce them to purchase more HP products, and protect HP's profits
11 from sales of non-HP products.

12 **RISK OF CONTINUED CONDUCT AND NEED FOR INJUNCTION**

13 95. HP has been engaged in an anticompetitive scheme to monopolize
14 the market, to the detriment of HP customers, for years across all inkjet printer
15 lines, through a facially unlawful and unfair scheme substantially similar to the
16 conduct described in this case.

17 96. In September 2017, numerous consumers filed suit in a series of
18 cases which were consolidated before this Court entitled *IN RE HP PRINTER*
19 *FIRMWARE UPDATE LITIGATION*, Case No. 5:16-cv-05820-EJD. The
20 litigation involved claims brought on behalf of purchasers of Tier One Printers,⁴
21 whose printers were subjected to a firmware update which rendered the printers
22 incompatible with third party ink cartridges. The litigation sought both monetary
23

24 ⁴ Tier One Printers included the following models of printers: HP OfficeJet Pro
25 6230, 6812, 6815, 6820, 6830, 6835, 8610, 8615, 8616, 8620, 8625, 8630,
26 X551dw, X451dn, X451dw, X576dw, X476dn, and X476dw. The class period
27 was defined as all consumers who purchased Tier One printers between March 1,
28 2015 through December 31, 2017. Details of the settlement can be reviewed at
Dkt. No. 118 of *IN RE HP PRINTER FIRMWARE UPDATE LITIGATION*.

1 relief and injunctive relief on behalf of HP customers for nearly identical
2 conduct as is alleged in the present action, as can be seen from the complaint in
3 that action at Dkt. No. 60.

4 97. After years of litigation, including after plaintiffs filed their
5 consolidated motion for class certification, the parties were able to resolve the
6 matter on a class-wide basis which included both monetary relief and injunctive
7 relief pertaining to HP's use of the Dynamic Security technology to push
8 firmware updates onto users' printers which deactivated the printers when used
9 with certain third party ink cartridges. "Under the Settlement, HP agrees not to
10 reinstall or reactivate Dynamic Security in the printers at issue in this litigation."
11 Dkt. No. 110 at Pg. 6.

12 98. Despite having used Dynamic Security technology for years to push
13 firmware updates onto its customers' printers, to their detriment and to HP's
14 benefit, and despite having entered into a stipulated nationwide injunction by
15 which HP agreed to no longer conduct business in this manner, at least with
16 respect to certain printer models, HP continues to use either the same or
17 substantively similar technology to push firmware updates on its customers for
18 other similar Tier two models of printers that were not specifically subject to the
19 settlement in the prior litigation.

20 99. HP is aware that customers have brought successful litigation
21 against it for nearly identical conduct in the past, and knows that it was required
22 to agree to enter into a stipulated class settlement agreement which, in part,
23 enjoined future similar conduct on HP's part, yet nonetheless continues to
24 engage in nearly identical conduct with respect to its customers, as evidenced by
25 the experiences of Plaintiff and class members.

26 100. It is clear from these circumstances that there is a substantial risk of
27 future harm to Plaintiff, to putative class members, and to competition generally
28

1 if HP is not enjoined from such future behavior by order of court.

2 **CLASS ACTION ALLEGATIONS**

3 101. Plaintiff brings this action, on behalf of himself and all others
4 similarly situated, and thus, seeks class certification under Federal Rule of Civil
5 Procedure 23.

6 102. The class Plaintiff seeks to represent a Class (the “Class”) and
7 Subclass (“the Subclass”) is defined as follows:

8 All United States Citizens who, between the applicable
9 statute of limitations and the present, purchased or
owned one of more Class Printers.

10 **The Florida Subclass**

11 All persons in Florida who purchased or owned one
12 or more Class Printers.

13 103. As used herein, the term “Class Members” shall mean and refer to
14 the members of the Class described above.

15 104. Excluded from the Class are Defendant, its affiliates, employees,
16 agents, and attorneys, and the Court.

17 105. Plaintiff reserves the right to amend the Class, and to add additional
18 subclasses, if discovery and further investigation reveals such action is
19 warranted.

20 106. Upon information and belief, the proposed class is composed of
21 thousands of persons. The members of the class are so numerous that joinder of
22 all members would be unfeasible and impractical.

23 107. No violations alleged in this complaint are contingent on any
24 individualized interaction of any kind between class members and Defendant.

25 108. Rather, all claims in this matter arise from the identical and
26 affirmative forced modifications.

27 109. There are common questions of law and fact as to the Class
28 Members that predominate over questions affecting only individual members,

including but not limited to:

- (a) Whether Defendant engaged in unlawful or unfair business practices in forcibly modifying Plaintiff and other Class Members printers;
- (b) Whether Defendant made misrepresentations with respect to the printers originally sold to Purchasers;
- (c) Whether Defendant profited from both the initial sale and use of the printer and the forced modification;
- (d) Whether Defendant violated F.S.A. §§ 501.201 *et seq.*;
- (e) Whether Plaintiff and Class Members are entitled to equitable and/or injunctive relief;
- (f) Whether Defendant's unlawful and/or unfair practices harmed Plaintiff and Class Members; and
- (g) The method of calculation and extent of damages for Plaintiff and Class Members.

110. Plaintiff is a member of the class he seeks to represent

111. The claims of Plaintiff are not only typical of all class members, they are identical.

112. All claims of Plaintiff and the class are based on the exact same legal theories.

113. Plaintiff has no interest antagonistic to, or in conflict with, the class.

114. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member, because Plaintiff bought a printer from Defendant during the Class Period. Defendant's unlawful and/or unfair actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff's claims are typical of all Class Members as demonstrated herein.

115. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent himself and the class.

116. Common questions will predominate, and there will be no unusual manageability issues.

FIRST CAUSE OF ACTION

Violation of the Florida Deceptive and Unfair Trade Practices Act

(F.S.A §§ 501.201 *et seq.*)

On Behalf of the Florida Subclass

117. Plaintiff incorporates by reference each allegation set forth above.

118. Pursuant to Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), §§ 501.201 *et seq.*, it is unlawful to engage in “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”⁵

119. Defendant’s conduct as alleged above violates the FDUTPA in that Defendant misled Purchasers by intentionally omitting highly relevant material information from purchasers at the point of sale regarding future restrictions that HP would place on the use of Class Printers, namely a firmware update that would render incompatible any third party or refill ink cartridges with Class Printers.

120. Defendant’s conduct as alleged above violates the FDUTPA in that Defendant invaded Class Members’ Class Printers without notice or authorization and substantially decreased the value of the products, after the point of sale, by installing permanent firmware updates onto the units that rendered the units less functional and less valuable than they were prior to that

⁵ For clarity, Plaintiff only alleges a claim that Defendant’s conduct was unfair and thus unlawful, not that it was deceptive.

1 time.

2 121. Defendant's conduct as alleged above violates the FDUTPA in that
3 Defendant invaded Class Members' Class Printers without notice or
4 authorization, and rendered existing third party and refill ink cartridges that
5 Class Members had previously purchased and owned valueless to class members

6 122. Defendant's conduct as alleged above violates the FDUTPA in that
7 Defendant made Defendant sold printers which were not advertised to disclose
8 particular features and functions and forced modifications without consumers'
9 consent.

10 123. Defendant's conduct as alleged above violates the FDUTPA in that
11 Defendant's conduct is harmful to competition and raises the cost of owning
12 printers amongst consumers generally in the marketplace by artificially
13 restricting free choice with respect to aftermarket products. This is
14 accomplished by forcing existing customers who have sunk a high upfront cost
15 in a printer (a barrier to entry for a consumer who wishes to purchase a
16 competitor printer but is now stuck), and now are restricted to continuing to use
17 that printer and HP brand ink cartridges at an artificially elevated variable cost
18 due to barriers preventing them from altering their otherwise free choice. By
19 tying a fixed base product (printers) to variable products (ink cartridges) in this
20 way, when combined with undisclosed deceptive conduct of altering the base
21 product without authorization, HP has harmed competition and consumers both
22 generally, and specifically.

23 124. These acts are unconscionable, constitute unfair methods of
24 competition and unfair trade practices as set forth under the FDUTPA, which
25 shall be "construed liberally" to promote policies that promote consumer
26 protection.

27 125. HP's conduct offends established public policy and is immoral,
28

1 unethical, oppressive, unscrupulous, and substantially injurious to consumers.

2 126. Plaintiff, as a consumer of Defendant's products and being directly
3 impacted by the conduct described herein suffered actual damages, and was
4 injured by Defendant's conduct.

5 127. Plaintiff relied on Defendant's material omissions and would never
6 have purchased Defendant's products had he known that Defendant intended to
7 implement firmware updates that would devalue his printers in the manner
8 alleged herein.

9 128. The unfair described herein presents a continuing threat to Plaintiff
10 and the Class Members in that Defendant persists and continues to engage in
11 these practices, and will not cease doing so unless and until forced to do so by
12 this Court. Defendant's conduct will continue to cause irreparable injury to
13 Purchasers unless enjoined or restrained. Plaintiff is entitled to preliminary and
14 permanent injunctive relief ordering Defendant to cease their false advertising
15 and forced modification of property, as well as disgorgement, actual damages
16 and restitution to Plaintiff and all Class Members.

17 **SECOND CAUSE OF ACTION**

18 **Violations of the Computer Fraud and Abuse Act,**

19 **(18 U.S.C. § 1030, *et seq.*)**

20 **(On Behalf of the Class)**

21 129. Plaintiff incorporates the above allegations by reference.

22 130. The Consumer Fraud and Abuse Act ("CFAA") establishes a private
23 cause of action against a person who "knowingly accessed a computer without
24 authorization or exceeding authorized access," and whose prohibited access
25 results in damage or loss in excess of \$5,000. *See* 18 U.S.C. § 1030(g)
26 (referencing § 1030(c)(4)(A)(i)(I)); *see also* § 1030(a).

27 131. Specifically, the CFAA establishes liability against whomever:
28

1 a. “knowingly causes the transmission of a program, information, code,
2 or command, and as a result of such conduct, intentionally causes damage without
3 authorization, to a protected computer” (§ 1030(a)(5)(A));

4 132. The term “computer” means “an electronic, magnetic, optical,
5 electrochemical, or other high speed data processing device performing logical,
6 arithmetic, or storage functions, and includes any data storage facility or
7 communications facility directly related to or operating in conjunction with such
8 device[.]” 18 U.S.C. § 1030(e)(1).

9 133. A “protected computer” is defined, in relevant part, as a computer
10 “which is used in or affecting interstate or foreign commerce or communication.”
11 18 U.S.C. § 1030(e)(2)(B).

12 134. “[E]xceeds authorized access” means “access[ing] a computer with
13 authorization and ... us[ing] such access to obtain or alter information in the
14 computer that the accesser is not entitled so to obtain or alter.” 18 U.S.C. §
15 1030(e)(6).

16 135. “Loss” means “any reasonable cost to any victim, including the cost
17 of responding to an offense, conducting a damage assessment, and restoring the
18 data, program, system, or information to its condition prior to the offense, and
19 any revenue lost, cost incurred, or other consequential damages incurred because
20 of interruption of service.” 18 U.S.C. § 1030(e)(11).

21 136. Damage means “any impairment to the integrity or availability of
22 data, a program, a system, or information.” 18 U.S.C. § 1030(e)(8).

23 137. Class Printers are “computers” under the CFAA by virtue of their
24 data processing and storage functionality and their operation in conjunction with
25 Plaintiff’s and Class members’ laptop or desktop computers.

26 138. Class Printers are “protected computers” under the CFAA because
27 they are used in and affect interstate and foreign commerce and communication,
28 including through contact and communication with remote servers and through

1 personal and business usages that affect interstate and foreign commerce.

2 139. HP knowingly and intentionally exceeded its authorized access to
3 Plaintiff's and Class members' printers. Plaintiff and Class members did not
4 consent to HP's invasive firmware update.

5 140. By exceeding its authorized access, HP obtained and altered Class
6 Printers' information and data. HP initiated printer-to-cartridge communications
7 that, through the use of key codes, prevented the ink cartridge from continuing to
8 work with the printer. These communications resulted from a single act in the
9 form of HP's activation of its firmware update.

10 141. By implementing its firmware update, HP knowingly caused the
11 transmission of "a program, information, code, or command ... to a protected
12 computer" and, as a result of that conduct, intentionally caused damage in
13 violation of 18 U.S.C. § 1030(a)(5)(A).

14 142. HP's firmware implementation represented a single act through
15 which HP intentionally accessed Plaintiff's and Class members' protected
16 computers without authorization and by exceeding authorization. As a direct and
17 proximate result of HP's CFAA violations, HP caused damages and loss to
18 Plaintiff and Class members during a one-year period that exceed \$5,000 in
19 value.

20 143. HP's firmware implementation caused damage and loss to Plaintiff
21 and Class members—including by disabling Class Printers, eliminating or
22 impairing Plaintiff's and Class members' use of those printers, depriving
23 Plaintiff and Class members of the ability to use more affordable, non-HP
24 replacement cartridges in their Class Printers, causing Plaintiff and Class
25 members to expend money, time, and labor to investigate and try to fix their
26 disabled printers, and decreasing the value of the Class Printers.

27 144. Based on HP's violation of the CFAA, Plaintiff and Class members
28

1 seek recovery of economic damages and all other relief provided for under 18
2 U.S.C. § 1030(g).

3 **THIRD CAUSE OF ACTION**

4 **Trespass to Chattels**

5 **(On Behalf of the Class)**

6 145. Plaintiff incorporates the above allegations by reference.

7 146. Plaintiff and Class members owned, possessed, and used, and had a
8 right to possess and use, their Class Printers and their non-HP ink cartridges
9 designed to be used in these printers.

10 147. HP wrongfully and intentionally interfered with Plaintiff's and Class
11 members' ownership, possession, and use of their Class Printers and non-HP ink
12 cartridges, by programming, distributing, and remotely activating a firmware
13 update that disabled Class Printers containing non-HP ink cartridges and
14 rendered those cartridges unusable.

15 148. HP's wrongful and intentional interference with Plaintiff's and
16 Class members' ownership, possession, and use of their Class Printers and non-
17 HP ink cartridges caused damage to Plaintiff and Class members, including by
18 preventing the Class Printers from operating, by impairing the condition of these
19 printers, by reducing the value of these printers, and by depriving Plaintiff and
20 Class members of the use of these printers and of their non-HP ink cartridges for
21 a substantial period of time. A reasonable person would be willing to pay
22 significantly less for a Class Printer, and for non-HP ink cartridges compatible
23 with it, upon knowing that the printer contained or would be updated with
24 firmware that would prevent the printer from operating with non-HP ink
25 cartridges.

26 149. Plaintiff and Class members are entitled to recover the amount by
27 which HP's firmware update harmed their possessory interests in Class Printers
28

1 and non-HP ink cartridges.

2 **MISCELLANEOUS**

3 150. Plaintiff and Class Members allege that they have fully complied
4 with all contractual and other legal obligations and fully complied with all
5 conditions precedent to bringing this action or all such obligations or conditions
6 are excused.

7 **REQUEST FOR JURY TRIAL**

8 151. Plaintiff requests a trial by jury as to all claims so triable.

9 **PRAYER FOR RELIEF**

10 152. Plaintiff, on behalf of himself and the Class and the Subclass,
11 requests the following relief:

- 12 (a) An order certifying the Class and Subclass and appointing
- 13 Plaintiff as Representative of the Class and Subclass;
- 14 (b) An order certifying the undersigned counsel as Class Counsel;
- 15 (c) An order requiring HP, INC., at its own cost, to notify all
- 16 Class Members of the unlawful and unfair conduct herein;
- 17 (d) An order requiring HP, INC. to engage in corrective
- 18 advertising regarding the conduct discussed above;
- 19 (e) An order entering injunctive and declaratory relief as
- 20 appropriate under applicable law;
- 21 (f) Actual damages suffered by Plaintiff and Class Members and
- 22 Subclass Members as applicable or full restitution of all funds
- 23 acquired from Plaintiff and Class Members and Subclass
- 24 Members from the sale of Class Printers during the relevant
- 25 class period;
- 26 (g) Punitive damages, as allowable, in an amount determined by
- 27 the Court or jury;
- 28

- (h) Any and all statutory enhanced damages;
- (i) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (j) Pre- and post-judgment interest; and
- (k) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members and Subclass Members may be justly entitled as deemed by the Court.

Dated: June 5, 2020

Respectfully submitted,

By: /s/ Todd M. Friedman

TODD M. FRIEDMAN, ESQ.

ADRIAN R. BACON, ESQ.

Attorneys for Plaintiff John Parziale

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2020, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system.

/s/ Adrian R. Bacon

Adrian R. Bacon